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ANTI-DOPING SANCTIONS AND DATA PROTECTION UNDER EU LAW – A COMPARISON OF THE ADVOCATES GENERAL'S OPINIONS IN THE *NADA* CASES

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ABSTRACT: This paper explores the tension between transparency and data protection in the context of anti-doping enforcement, focusing on the General Data Protection Regulation - GDPR - and its application to the public disclosure of athletes' personal data. The aim of this paper is to provide a comparative analysis of two Opinions delivered by Advocates General Capeta (2023) and Spielmann (2025) in two distinct but closely related cases before the Court of Justice of the European Union. Although the earlier case was dismissed on procedural grounds, both Opinions deal with fundamental legal questions concerning, inter alia, the applicability of the GDPR to national anti-doping rules, the qualification of doping-related data as "data concerning health" under Article 9 of the GDPR, and the lawfulness and proportionality of national laws mandating publication of anti-doping sanctions in the light of the principle of data minimisation. The paper critically evaluates the contrasting approaches of the two Advocates General, situating them within broader debates on privacy, transparency, and the autonomy of sport, while reflecting on the implications for future regulatory practice both within and beyond the European Union's boundaries.

Il presente contributo analizza la tensione tra trasparenza e protezione dei dati personali nell'ambito della lotta al doping, con particolare attenzione all'applicazione del Regolamento generale sulla protezione dei dati (GDPR) alla divulgazione pubblica delle sanzioni inflitte agli atleti. L'articolo propone un'analisi comparata di due Opinioni formulate dagli Avvocati Generali Capeta (2023) e Spielmann (2025) in due casi distinti ma strettamente connessi. Sebbene il primo caso sia stato dichiarato irricevibile per motivi procedurali, entrambi i pareri affrontano questioni giuridiche centrali, quali l'applicabilità del GDPR alle norme nazionali antidoping, la

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qualificazione dei dati sul doping come "dati relativi alla salute" ai sensi dell'art. 9 del GDPR, e la compatibilità dell'obbligo di pubblicazione con i principi di liceità, proporzionalità e minimizzazione dei dati. L'articolo valuta criticamente i due approcci, mettendoli in relazione con i più ampi dibattiti su privacy, trasparenza e autonomia dello sport, evidenziandone le implicazioni per la futura prassi regolatoria sia all'interno che al di là dei confini dell'Unione europea.

Keywords: *GDPR – Data Protection – Anti-Doping – Transparency – Proportionality.*

GDPR – Protezione dei dati – Antidoping – Trasparenza – Proporzionalità.

1. Introduction

The *NADA* case,[1] currently pending before the Court of Justice of the European Union (the Court of Justice), arises from a dispute involving the processing and publication of athletes' personal data by a national anti-doping authority under national legislation implementing anti-doping rules.

At the heart of the case is the question of whether such processing – in particular the mandatory publication of the names, suspension periods, and reasons for sanctions imposed on professional athletes – complies with the requirements of the General Data Protection Regulation (GDPR).[2]

This paper analyses and compares two Opinions of Advocates General (AGs) relating to the application of the GDPR in the context of national anti-doping rules.[3] The two Opinions, authored respectively by AG Capeta in 2023

[1] ECJ, *NADA Austria and Others*, Case C-474/24.

[2] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4 May 2016, 1. See O. MacGregor, R. Griffith, D. Ruggiu, M. McNamee, *Anti-doping, purported rights to privacy and WADA's whereabouts requirements: A legal analysis, Fair Play*, Revista de Filosofía, Ética y Derecho del Deporte, 2013, vol. 1, issue 2, 13-38.

[3] On the GDPR see, in general, C. Kuner, L.A. Bygrave, C. Docksey, L. Drechsler (eds.), *The EU General Data Protection Regulation (GDPR): A* Commentary,2020, Oxford University Press; C. Kuner, L.A. Bygrave, C. Docksey, L. Drechsler, L. Tosoni, *The EU General Data Protection Regulation: A Commentary*, 4 May, 2021, Maastricht Faculty of Law Working Paper, available at SSRN: *https://ssrn.com/abstract=3839645* or *http://dx.doi.org/10.2139/ssrn.3839645*.

and AG Spielmann in 2025, address fundamentally similar legal questions concerning the processing and publication of athletes' personal data under anti-doping legislation, although they reach very contrasting conclusions.

The two Opinions refer to two distinct cases before the Court of Justice, which must be carefully distinguished. In particular, it happened that the national proceedings pending before the Austrian Federal Administrative Court (the referring court in case C-474/24) had been suspended because the Austrian Independent Arbitration Committee (USK, the referring body in case C-112/22) had made a request for a preliminary ruling. Following the judgment of the Court of Justice declaring the request in case C-112/22 inadmissible on procedural grounds, the proceedings before the Austrian Federal Administrative Court resumed, and the Court then submitted the reference that gave rise to case C-474/24. More specifically, the Court of Justice rejected the preliminary reference from the USK on the basis that it did not qualify as a "*jurisdiction of a Member State*" within the meaning of Article 267 TFEU. As a result, the Court of Justice did not address, on the merits, the GDPR questions raised. Nonetheless, AG Capeta proceeded to examine the merits of the issues in her opinion, offering a detailed interpretation of the GDPR's applicability to national anti-doping measures.

By contrast, AG Spielmann's opinion refers to the more recent case currently pending before the Court.[4] Crucially, the questions referred by the Austrian judge in this later case mirror, at least partially, those considered in the earlier proceedings. Thus, while the earlier case did not result in a binding judgment, AG Capeta's reasoning provides a substantive benchmark against which AG Spielmann's more recent approach can be compared.

2. The Factual Background

The background facts concern Austrian professional athletes who were found to have committed a breach of anti-doping rules and were subsequently sanctioned by the Austrian anti-doping authority (NADA). In accordance with the relevant national law, those sanctions were published online and included the athletes' names, the length of the suspensions, and the underlying reasons, including the name of the prohibited substance found in the athletes' bodies. As a result, the athletes contested the legality of this publication, invoking the GDPR and arguing that the publication infringed their rights to data protection and privacy under EU law.

In both cases, the referring national courts submitted a preliminary reference to the Court, posing several questions aimed at clarifying the interpretation and application of key provisions of the GDPR in this context. Specifically, the referring courts asked, *inter alia*:

(a) whether the GDPR applies to the processing of personal data carried out under national anti-doping legislation, given that sport is not a harmonised field under EU law;

[4] Opinion of Advocate General Spielmann delivered on 25 September 2025, ECLI:EU:C:2025:733.

(b) whether the information disclosed – including the use or attempted use of a prohibited substance – constitutes "*data concerning health*" within the meaning of Article 9, paragraph 1 of the GDPR;

(c) whether the GDPR precludes a national legal obligation requiring the systematic and public disclosure of the identity of sanctioned athletes, the length of the ban, and the grounds for sanction, in light of the GDPR's principles of lawfulness, data minimisation, and proportionality;

(d) whether the GDPR requires a review of proportionality by a data controller in each individual case prior to the disclosure of personal data to the public.

More generally, the questions referred to the Court of Justice raise a delicate problem of coordination between the objectives underlying anti-doping regulations and those inspired by the GDPR.

On one hand, anti-doping enforcement serves basic public interest goals such as maintaining the integrity of sport, deterring doping, and protecting athletes' health. On the other hand, the GDPR mandates strict limitations on the processing of personal data, particularly sensitive data such as health-related information, and requires that any such processing be proportionate and justified.

Adding further legal complexity is the fact that sport, while referenced in Article 165 of the Treaty on the Functioning of the European Union (TFEU), is not a sector in which the Union has harmonising competence. Instead, the European Union may only support, coordinate or supplement Member State actions in the field of sport. This has led to differing interpretations of whether the GDPR – an EU regulation – applies to national anti-doping frameworks that are predominantly non-economic in nature.

3. The Applicability of the GDPR to National Anti-Doping Rules

The first and foundational question referred to the Court of Justice concerns the applicability of the GDPR to the processing of personal data under national anti-doping legislation. Article 2, paragraph 2, (a) of the GDPR excludes from its scope the processing of personal data "*in the course of an activity which falls outside the scope of Union law*".

In this context, national anti-doping rules primarily govern sporting conduct, a field in which the EU holds only supporting competences under Article 6 TEU and Article 165 TFEU. The question is therefore whether the enforcement of anti-doping rules, and the processing of athletes' personal data, constitutes an "*activity within the scope of Union law*" for the purposes of Article 2 of the GDPR. The implications of this question are significant: if the GDPR does not apply, EU athletes may be left without the procedural and substantive protections offered by EU data protection law.

AG Spielmann adopts a broad interpretation of the GDPR's scope and concludes that the processing of personal data pursuant to national antidoping rules cannot be regarded as part of an activity which falls outside the scope of Union law within the meaning of Article 2, paragraph 2, (a) of the

GDPR.[5] To support this conclusion, AG Spielmann argues that the GDPR was adopted on the basis of Article 16 TFEU, and Article 2, paragraph 2, (a) of the GDPR excludes from its scope the processing of personal data carried out in the course of an activity "*which falls outside the scope of Union law*". In this respect, "*the Court of Justice has held that Article 2, paragraph 2, (a) of the GDPR, read in the light of recital 16 thereof, is designed solely to exclude from the scope of that regulation the processing of personal data carried out in the course of an activity which is intended to safeguard national security or an activity which can be classified in the same category*",[6] i.e. those that are intended to protect essential State functions and the fundamental interests of society.[7] Since doping is contrary to the principle of fairness in sporting competition and also poses health risks, it cannot be maintained that the activity of combating doping relates to national security or which could be classified in that category under Article 2, paragraph 2, (a) of the GDPR.[8] Moreover, although Articles 6 TUE and 165 TFUE do not confer any competence on the Union to legislate in the field of sport, the European Union is entitled to adopt legal acts with the aim of supporting, coordinating or complementing Member State action, in accordance with Article 6 TFEU. "*Therefore, the fact that the antidoping rules are "sporting" in nature does not permit the inference that their implementation constitutes an activity which falls outside the scope of Union law, within the meaning of Article 2, paragraph 2, (a) of the GDPR*".[9]

Lastly, AG Spielmann underlines that, according to Article 49 of the GDPR, read together with recital 112, the transfer of personal data to third countries or international organisations may take place, even if the conditions for such a transfer to take place are not met, where the international data exchange is necessary "*to reduce and/or eliminate doping in sport*". As a result, AG Spielmann argues that "*the EU legislature did not consider that the processing of personal data in connection with doping control, although it relates to a non-economic activity, fell outside the scope of [the] regulation*".[10]

In contrast, AG Capeta takes a more restrictive view of the scope of the GDPR, arguing that the processing of personal data under national anti-doping rules falls outside the scope of Union law within the meaning of Article 2, paragraph 2, (a) GDPR.[11] In particular, the AG Capeta notes that "*the processing*

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[5] Opinion of Advocate General Spielmann, paragraph 60.

[6] Ibid., paragraph 40. Court of Justice, judgment of 22 June 2021, *Latvijas RFepublikas Saeima (Penalty points),* C-439/19, EU:C:2021:504, point 62; judgment of 20 October 2022, *Koalitsia Demokratichna Bulgaria – Obedinenie*, C-306/21, EU:C:2022:813, point 35; judgment of 16 January 2024, *Österreichische Datenschutzbehörde*, C-33/22, EU:C:2024:46, paragraph 37.

[7] Ibid., paragraph 41.

[8] Ibid., paragraph 44.

[9] Ibid., paragraph 52.

[10] Ibid., paragraph 57.

[11] Opinion of the Advocate General Capeta delivered on 14 September 2023, ECLI:EU:C:2023:676, paragraph 90. See M. Herrlein, *Reassessing data protection in anti-doping – key points of Advocate*

of personal data for the purpose of implementing a Member State's anti-doping legislation is not an activity that brings that processing activity within the scope of such law since the European Union does not have competence to regulate sport".[12] According to the AG Capeta, "*anti-doping rules primarily regulate sport as sport*".[13] As a results, "*they are concerned with sport's social and educational functions, rather than its economic aspects, even if the former may influence the latter. Nevertheless, even if the European Union lacks regulatory competence in sport, it could theoretically harmonise national anti-doping rules, if this is justified as being necessary to remove obstacles to cross-border movements. However, as the law currently stands, there are no EU rules that relate, even indirectly, to the anti-doping policies of the Member States*".[14] Therefore, the AG Capeta concludes that bringing such activities within the ambit of the GDPR would effectively extend EU competence into a domain – sport – where the Treaties expressly limit the Union to a supportive role.[15]

Lastly, it is important to note that AG Capeta, while admitting that national anti-doping rules may be regarded as an obstacle to free movement and therefore be subjected to EU law, observes that the case at issue does not concern such a situation.[16] In contrast, AG Spielmann argues that if, to determine the scope of the GDPR, it was necessary to rely on the existence of an economic link, "*the unsatisfactory result would be that the GDPR could, for example, apply to professional athletes but not to amateur athletes*" and such a difference in treatment "*is difficult to reconcile with the GDPR and its objectives of protecting personal data*".[17]

4. The Classification of Anti-Doping Data as "Data Concerning Health"

The second question concerns whether the data disclosed in connection with doping violations – particularly the name of the substance used, or the method of doping employed – constitutes "*data concerning health*" within the meaning of Article 9, paragraph 1 and Article 4, paragraph 15 of the GDPR.

Health data is classified as a special category of personal data, which enjoys heightened protection under the GDPR and may only be processed under strict conditions. The issue here is whether the mere fact that an athlete tested

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General Ćapeta's opinion, 3 July 2024, available at *https://www.lawinsport.com/topics/item/reassessing-data-protection-in-anti-doping-a-summary-of-key-points-raised-by-advocate-general-capetas-opinion*.

[12] Ibid., paragraph 88.
[13] Ibid., paragraph 89.
[14] Ibid., paragraph 89.
[15] Ibid., paragraph 87.
[16] Ibid., paragraph 88.
[17] Opinion of AG Spielmann, paragraph 59.

positive for a prohibited substance, or was found in possession of such a substance, reveals information about the athlete's physical or mental health, directly or indirectly. While some forms of doping may have medical connotations, others may not, making this a nuanced question of definition and context.

According to AG Spielmann, disclosing the name of the athlete concerned, the duration of his or her suspension and the grounds for that suspension does not constitute processing of data concerning health, within the meaning of the above-mentioned provisions, unless those grounds include the name of the prohibited substance or substances found to be present in the body of the athlete in question, where that indication is capable of revealing, even indirectly, information on the health status, including the future health status, of the athlete concerned.[18]

In particular, the AG notes that some anti-doping rules violations (such as the presence of a prohibited substance or its metabolites or markers in an athlete's sample and the use or attempted use by an athlete of a prohibited substance or a prohibited method) involve anti-doping tests on the athlete concerned and the analysis of samples in order to detect prohibited substances and methods. Such analyses are carried out by accredited professionals and therefore in a quasi-medical or even medical context. As a result, "*the finding of such infringements is (...) linked to "information derived from the testing or examination of a body part or bodily substance" within the meaning of recital 35 of the GDPR*" and "*such information could, therefore, be regarded as health data by nature*".[19]

However, AG Spielmann admits that "*the mere mention of the name of the prohibited substance present in the body could be considered insufficient, in itself, to reveal information on the health status, or even the future health status, of the athlete concerned. The actual content of the information could, in that respect, be regarded as too succinct and the link with health status too indirect, or even too hypothetical, to constitute "health data" within the meaning of the GDPR*".[20] However, it cannot be ruled out that, "*when combined with other elements, that information may, even indirectly, be capable of revealing, by means of an intellectual operation involving collation or deduction, information about the health status of the data subject, including his or her future health status*".[21] As a result, the reference to the name of the substance in question (or its category) gives indications which, even if not very detailed, are capable of providing information, albeit indirectly, on the health status of the data subject. In the specific context of the GDPR, such a reference may constitute "*data concerning health*" within the meaning of Article 4, paragraph 15 and Article 9, paragraph 1 of the GDPR, read in conjunction with Recital 35 of that regulation.

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[18] Opinion of Advocate General Spielmann, paragraph 82.
[19] Ibid., paragraphs 74–75.
[20] Ibid., paragraph 79.
[21] Ibid., paragraph 79.

In contrast to the AG Spielmann's approach, AG Capeta adopts a more formalistic and narrow interpretation of "*data concerning health*" under Article 4, paragraph 15 of the GDPR, insisting that the information that a professional athlete has committed a breach of an anti-doping rule linked to the use or attempted use or possession of a prohibited substance or method does not, in itself, constitute "*data concerning health*".[22] In particular, AG Capeta points out that, as defined in Article 4, paragraph 15 of the GDPR, "*data concerning health*" means "*personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status*".[23] As a result, the simple "*finding that the athlete consumed or was in the possession of certain prohibited substances says nothing about his/her physical or mental health status. Much like the consumption of alcohol says nothing about whether a person suffers from alcohol dependency, the athlete's consumption or possession of a prohibited substances does not reveal any logical or clear connection to his/her physical or mental health*".[24]

5. *Lawfulness and Proportionality of Public Disclosure Obligations*

The third and perhaps most relevant legal question concerns the lawfulness, necessity, and proportionality of a national legal obligation that mandates the publication of personal data relating to sanctioned athletes – including their names, the length of the ban imposed, and the reasons for it (e.g., the name of the prohibited substance).

To fully understand the relevance of this question and appreciate the different conclusions reached by the two AGs, it is noteworthy to briefly recall some general principles enshrined in the GDPR.

Article 6, paragraph 1, (c) of the GDPR provides that processing which is necessary for compliance with a legal obligation to which the controller is subject is lawful. Moreover, Article 6, paragraph 1, (e) of the GDPR provides that processing which is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller is lawful.

Article 5, paragraph 1, (c) of the GDPR provides that personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Lastly, Article 6, paragraph 3 of the GDPR stipulates, with regard to both those situations where processing is lawful, referred to in Article 6, paragraph 1, (c) and (e) of the GDPR, that such processing must be based on EU law or on the law of the Member State to which the controller is subject, and that that legal basis must meet a public interest objective and be proportionate to the legitimate aim pursued.

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[22] Opinion of Advocate General Capeta, paragraph 102.
[23] Ibid., paragraph 96.
[24] Ibid., paragraph 99.

In this context, AG Spielmann adopts a protective stance toward individual rights and concludes that an obligation to publish personal data is permissible "*only in so far as, having regard to the objectives of deterrence and avoidance of circumvention of the anti-doping rules, it remains proportionate, in particular as regards the scope and duration of publication, in the light of the specific circumstances at issue*".[25] In particular, he observes that the publication of certain personal data – namely, the athlete's name, the reasons for the sanction, and the duration of the suspension – may be regarded as appropriate in light of the two objectives pursued: first, deterring doping by signalling that violations are met with serious consequences; and second, preventing circumvention of bans by ensuring that relevant stakeholders are informed of the suspension.[26] However, the appropriateness of publishing more detailed information – such as the specific banned substance involved – is neither expressly required by national law nor strictly necessary to meet the deterrence or enforcement objectives.[27] Therefore, this level of disclosure may go beyond what is justified under the GDPR. To this regard, AG Spielmann is of the opinion that the necessity of the publication must be assessed in light of the GDPR's requirement to consider whether less intrusive means could achieve the same objectives.[28] While public identification may be more effective in deterring high-profile athletes, the automatic and generalised online publication of all sanctioned professional athletes – regardless of the nature of the offence, the athlete's profile, or the context – risks being disproportionate. Notably, the indefinite availability of such data on the internet expands the impact far beyond what may be necessary or proportionate for deterrence or enforcement within sport. Moreover, the need to prevent unauthorised association with suspended athletes, though legitimate, may not require public dissemination to the public.[29] Publishing the relevant name, but limited to the relevant bodies and sports federations, accompanied, for example, by pseudonymised publication on the internet, would make it possible to achieve the two objectives pursued in a way that is less prejudicial to the protection of personal data and more consistent with the principle of data minimisation.[30]

In contrast, AG Capeta defends the mandatory publication of the names, bans, and reasons for sanctions, arguing that such disclosure is both adequate and necessary for achieving the preventive function of deterring present and future athletes from committing a similar breach of those rules as well as for preventing the circumvention of suspensions by athletes.

In particular, the publication of the names and sanctions of athletes found to have violated anti-doping rules is appropriate to achieve the aim of deterrence,

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[25] Opinion of AG Spielmann, paragraph 169.
[26] Ibid., paragraphs 145–147.
[27] Ibid., paragraph 148.
[28] Ibid., paragraph 149.
[29] Ibid., paragraphs 150–152.
[30] Ibid., paragraph 158.

as the visibility of sanctions may serve as a warning not only to current professional and recreational athletes but also to young athletes considering a future in competitive sport.[31] Although it has been suggested that anonymous publication might suffice to achieve this objective,[32] AG Capeta is of the opinion that a personalised disclosure has a stronger deterrent effect. Knowledge that one's name may be publicly linked to a doping violation adds a reputational consequence that could dissuade athletes from doping where the penalty alone might not. Furthermore, ongoing availability of such information – at least for the duration of the suspension – enhances deterrence and increases the likelihood that the information will reach its intended audience. For lifetime bans, although the publication is permanent, it is still proportionate, so long as the information is accurate and limited to professional consequences.[33]

Publishing the athlete's identity also ensures that sports bodies, sponsors and employers can avoid unintentionally violating anti-doping rules by associating with suspended individuals. As a result, public access to such information is both appropriate and necessary for this purpose.[34] While it has been suggested that only relevant stakeholders should be informed, rather than the general public,[35] this approach seems unworkable in practice. It would be impossible to identify and contact all potentially interested parties, such as new sponsors or emerging sports clubs, at any given time. Moreover, given that engaging a suspended athlete can itself amount to a breach of anti-doping rules, general awareness of such suspensions is crucial to prevent inadvertent violations. In this context, disclosure of the athlete's name and sanction is not only justified but essential to uphold the integrity of the regulatory framework.

Lastly, as regards the publication on the Internet, AG Capeta's position is straightforward: the idea that publication on the internet is too intrusive is nonsense. If the obligation to make information which includes personal data available to the public is found to be justified, the only way for that obligation to be fulfilled in modern society is by publication on the internet. Just as no one would ask a person to go from door to door announcing news items after the invention of the printing press by Gutenberg, with the advent of the internet, print publication (such as, for instance, a newsletter) is no longer an adequate means of making information available to the public. Asking for offline publication amounts to asking for permission to circumvent the obligation to inform the public.[36]

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[31] Opinion of Advocate General Capeta, paragraph 148.

[32] Article 29 Data Protection Working Party, *Second opinion 4/2009 on the World Anti-Doping Agency (WADA) International Standard for the Protection of Privacy and Personal Information, on related provisions of the WADA Code and on other privacy issues in the context of the fight against doping in sport by WADA and (national) anti-doping organizations*, 6 April 2009, 17, point 3.6.2.

[33] Opinion of Advocate General Capeta, paragraph 151.

[34] Ibid., paragraph 150.

[35] Ibid., paragraph 161.

[36] Ibid., paragraphs 169–170.

6. The Requirement of a Case-by-Case Proportionality Review

In this context, the Court of Justice is also invited to consider whether the GDPR requires a review of proportionality by a data controller in each individual case prior to the disclosure of personal data to the public or the proportionality of said publication can be decided in advance by general law.

According to AG Spielmann, Articles 5 and 6 of the GDPR, read in the light of all the obligations and responsibilities incumbent on the controller, must be interpreted as not precluding a case-by-case balancing of the interests involved by the controller prior to that data processing, or even, in certain circumstances, as requiring such a balancing exercise if it is necessary in order to process personal data in a manner consistent with the GDPR.[37] To substantiate his conclusion, the AG observes that as controllers designated by the national legislature, the national anti-doping bodies "*remain responsible for implementing the processing and accountable for compliance with the principles of lawfulness and proportionality of that processing, as well as for compliance with the principle of minimisation*".[38] As a result, "*the fact that the national legislature has provided for the principle of publication does not relieve the controller of its responsibility to comply with the requirements of the GDPR and to protect the rights of data subjects. That may mean that, in the application of national law, it takes account of circumstances specific to the case*".[39] Accordingly, the GDPR, while not requiring it in every case, may require the controller to carry out a case-by-case balancing of the interests involved when determining the means of processing, including prior to publication.[40] In that regard, account could be taken of factors relating to the nature, scope, context and purposes of the processing and the risks to the rights and freedoms of the data subjects, which may vary in probability and severity. "*Neither the argument that such a margin of discretion on the part of the controller is liable to result in discrimination between athletes in comparable situations, nor the risk of arbitrariness, abuse or even corruption, referred to in particular by the Commission and NADA, can justify dispensing with such a case-by-case balancing, which is intended to process personal data in a manner consistent with the GDPR*".[41]

In contrast, AG Capeta firmly rejects the idea that anti-doping authorities must conduct a case-specific proportionality assessment before publishing sanctions, arguing that the GDPR does not require that a review of proportionality be conducted in each individual case of data processing by a controller.[42] Rather, the controller may rely on – if not be required to rely on – the proportionality assessment undertaken by the legislature. Therefore, a proportionality exercise by the legislature

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[37] Opinion of Advocate General Spielmann, paragraph 178.
[38] Ibid., paragraph 172.
[39] Ibid., paragraph 175.
[40] Ibid., paragraph 176.
[41] Ibid., paragraph 177.
[42] Opinion of Advocate General Capeta, paragraph 136.

cannot be individualised, although that exercise may take account of the data protection interests of a certain group of people and balance them in relation to other social interests involved.

AG Capeta acknowledges that legislation allowing (or requiring) data processing may adopt a different approach. It may permit certain data processing to be carried out if the controller finds it necessary in a predetermined context. In such a case, the proportionality exercise will have to be carried out by the controller in each case. However, legislation can also mandate a certain type of data processing to achieve a certain aim. In such a situation, no provision in the GDPR requires, or even allows the controller at issue to question the review of proportionality undertaken by the legislature. Of course, the legislature's proportionality exercise as such "*may be challenged in the courts by either data subjects, or indeed, data controllers. However, unless it successfully challenges the proportionality exercise of the legislature, the data controller is, in a situation such as that in the present case, under an obligation to undertake the data processing*".[43]

According to AG Capeta, this type of reading of the GDPR is in line with the principle of democracy and does not contravene the text of that regulation. "*In a democratic society, it is precisely the task of the legislature to strike the appropriate balance between conflicting rights and interests. Leaving that exercise to an independent, but politically unaccountable institution, even if it is sometimes necessary, is a less democratic solution*".[44] Moreover, AG Capeta also argues that "*making the publication of breaches of the anti-doping rules dependent on the discretionary decision of national anti-doping bodies in each individual case might result in abuse and corruption, especially considering the significant interest of athletes, clubs or even governments in preventing such publication. It may also result in inequality of treatment among athletes who, as concerns the commission of anti-doping offences, in fact, find themselves in a comparable situation*".[45]

7. Normative Evaluation and Broader Implications

The contrasting opinions of the Advocates General illustrate not only a divergent interpretative approach to the GDPR, but also – and more significantly – the existence of an inherent tension within EU law itself, concerning broader issues such as legal certainty, the protection of fundamental rights, the competences of the European Union and the principles of transparency and proportionality.

AG Capeta's reasoning rests heavily on a formal understanding of EU competence. She treats the absence of explicit legislative competence in the field of sport as determinative. By contrast, AG Spielmann's approach relies on the

[43] Ibid., paragraphs 137, 140–141.
[44] Ibid., paragraph 139.
[45] Ibid., paragraph 140.

Court of Justice's case-law, which has consistently interpreted the exception in Article 2(2)(a) GDPR narrowly, applying it primarily to core State functions such as national security – and not to regulatory fields like sport.

As regards the meaning of "*data concerning health*", the disagreement between the two AGs reflects broader debates in data protection law.[46] While AG Capeta excludes anti-doping data from Article 9 GDPR unless it directly reveals a health condition, treating doping more like disciplinary conduct than health-related behaviour, AG Spielmann points to the context of collection (biological sample analysis, pharmacological tests) and the potential inferences that could be drawn from publication of the specific substance used.

However, the relevant divergence between the two AGs concerns the lawfulness and proportionality of mandatory publication of personal data of sanctioned athletes. While both AGs accept that deterrence and rule enforcement constitute legitimate public interest aims under Article 6, paragraph 1, (e) of the GDPR, they disagree on the proportionality of the means used.

AG Capeta argues that a broad and public online disclosure is necessary, effective, and fair. She defends the predictability and non-discrimination of automatic publication and considers the internet to be the natural tool for public dissemination. In contrast, AG Spielmann warns of the permanence of internet publication. He identifies a risk of "digital stigmatisation", particularly for athletes whose careers may have ended or who are not high-profile public figures and underlines that proportionality is not static, and that the context, nature, and duration of the publication matter. This notion refers to the lasting negative impact that the permanent availability of information online can have on an individual's reputation and privacy, effectively freezing a person's identity in time and preventing them from moving beyond past events. Importantly, AG Spielmann does not argue against the Internet as such or its role in ensuring public access to information, but rather against the indefinite temporal dimension of online publication, which can render even lawful and accurate reporting disproportionate as time passes. AG Spielmann's view seems to better align with the Court's case law on data protection and the "right to be forgotten" (e.g. *Google Spain*, *GC and Others*),[47] which has recognised that even accurate information can become excessive or disproportionate over time.

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[46] See, for example, L. Maisnier-Broché, *Données de santé à caractére personnel – Régime general*, JurisClasseur Communication, 2019; J. Herveg, J.M. Van Gyshesemm, *Titre 16 – L'impact du Règlement general sur la protection des donnéès dans le secteur de la santé*, Le réglement general sur la protection des données (RGPD/GDPR), Larcier, Brussels, 2018, 722; Article 29 Data Protection Working Party, *Working Document on the processing of personal data relating to health in electronic health records (EHR)*, 15 February 2007, available at *https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp131_en.pdf*.

[47] Court of Justice, judgment of 13 May 2014, *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, C- 131/12, ECLI:EU:C:2014:317; judgment of 24 September 2019, *GC and Others v Commission nationale de l'informatique et des libertés (CNIL)*, C-136/17, ECLI:EU:C:2019:773.

This opposing approach inevitably also affects the fundamental question that the Court of Justice is called upon to answer: who decides when data disclosure is justified – the legislature or the controller?

According to AG Capeta the controller's role is executional, not evaluative, given that allowing discretion to anti-doping authorities might lead to corruption, pressure, or inequality in enforcement.

In contrast, AG Spielmann is of the opinion that, under Article 5, paragraph 2 of the GDPR (accountability) and Article 6, paragraph, which require that the means of processing be proportionate to the aim pursued, the controller bears ongoing responsibilities under the GDPR, even where processing is mandated by law.

8. Concluding Remarks and a Look Ahead

The opposing Opinions of Advocates General Spielmann and Capeta concerning the applicability and interpretation of the GDPR in the context of anti-doping regimes underscore the interpretive complexity of data protection law, especially when it intersects with other regulatory frameworks such as sport governance.

More generally, the case shows how fundamental rights, legislative competence, and data governance interact in the European legal order. While both AGs agree that anti-doping efforts serve important public interests, i.e., maintaining fair competition, safeguarding athletes' health, and upholding the credibility of sport, they sharply disagree on the legal means appropriate to pursue those objectives within the provisions of the GDPR.

In this context, the forthcoming judgment of the Court of Justice presents an opportunity to clarify the boundaries of the GDPR, particularly:

(i) the interpretation of Article 2, paragraph 2, (a) concerning activities that fall outside the scope of Union law;

(ii) the definition of "data concerning health" in Article 9, paragraph 1 in relation to anti-doping testing and procedures;

(iii) the extent to which Article 5 and Article 6 require individualised proportionality assessments even when data processing is mandated by law;

(iv) the role of principle of data minimisation in balancing transparency with data protection.

As these issues concern some fundamental aspects of the GDPR, the Court's ruling will contribute to clarifying whether the GDPR should be understood primarily as a regulatory framework for data processing practices, or also as a fundamental rights instrument that may impose additional substantive obligations in legally regulated contexts.

Whether the Court will follow AG Spielmann's more balanced approach or AG Capeta's competence-based pragmatism remains to be seen. In any case, the judgment is likely to have lasting significance for the governance of athletes' personal data, at least within the European Union, and potentially beyond its borders.

To this regard, it is worth to note that, formally, the preliminary rulings of the Court of Justice bind Member States and national courts. As a result, the future ruling of the Court in the *NADA* case will not directly bind WADA, which is constituted as a private Swiss foundation, nor non-EU National Anti-Doping Organisations (NADOs).

However, as sport constitutes a highly interconnected ecosystem, both nationally and internationally, such a binary framing might risk underestimating the practical reach of EU law in a globalised regulatory ecosystem.

As regards personal data collected for anti-doping purposes, it has been illustrated that "*these data are shared internationally, for example by sending samples to foreign labs, by sharing data between NADOs and between a NADO, an IF and/or a MEO. Almost all countries in the world may be of relevance because most countries have a NADO, national athletes participating in sport events and/or host large sport events. Results of potential Anti-Doping Rule Violations (ADRVs) may be sent to the external members of a sanctioning body or ultimately, to the Court of Arbitration for Sports (CAS), based in Switzerland. Data may be sent to the police or customs, inter alia, when there are signs of drug trafficking. And WADA may claim access to any of these data flows. To facilitate the cross-border data flows, WADA has designed an information clearinghouse called ADAMS, which is operated from Canada*".[48]

In this context, as clarified by both AGs Capeta and Spielmann,[49] although the WADA Code is a private legal instrument, its effectiveness is ensured through the 2005 UNESCO International Anti-Doping Convention. Member States, as parties to this Convention, must follow the principles of the Code, but its provisions are not directly binding in national law. As a result, when Member States adopt national anti-doping measures (laws, regulations, policies, practices) based on the Code, they must ensure compliance with EU law, including the GDPR. If parts of the WADA Code or its International Standards conflict with the GDPR, they cannot be directly transposed, as this would undermine data protection rights. Similarly, NADOs, as signatories to the WADA Code and data controllers, must apply national anti-doping measures in compliance with the GDPR. They cannot apply national rules that conflict with directly applicable GDPR provisions. Thus, Member States must carefully evaluate whether the WADA Code's data-processing provisions are GDPR-compliant, to avoid violations of EU law and possible sanctions from data protection authorities.[50]

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[48] European Commission, *Anti-Doping & Data Protection, An evaluation of the anti-doping laws and practices in the EU Member States in light of the General Data Protection Regulation*, 2017, 17.

[49] AG Capeta' Opinion, paragraph 5; AG Spielmann's Opinion, paragraph 1.

[50] European data Protection Board, *Recommendation 1/2025 on the 2027 WADA World Anti-Doping Code*, 11 February 2025, available at *https://www.edpb.europa.eu/our-work-tools/our-documents/recommendations/recommendations-12025-2027-wada-world-anti-doping-code*.

In this context, the significance of the Court of Justice's future ruling lies primarily in its indirect effects and in the normative pull it may exert.

As already observed, all EU-based NADOs and public authorities will be directly bound to follow the Court's interpretation. If the Court follows AG Spielmann's Opinion, EU NADOs will have to abandon blanket publication of sanction lists and instead implement nuanced proportionality assessments. However, this obligation is likely to influence the data transmitted into the WADA Anti-Doping Administration and Management System (ADAMS),[51] the information published online, and the duration of data accessibility. Accordingly, the volume of publicly available data from EU NADOs may decrease.

More generally, it should be noted that the WADA Code is adopted by over 700 signatories and embedded in the UNESCO International Convention against Doping in Sport, and it is designed to ensure uniformity worldwide. However, insofar as modifications are envisaged for the benefit of EU NADOs, such adjustments may pose difficulties for the harmonisation of anti-doping rules, which represents the primary objective of the WADA Code.

On the other hand, it is all too evident that the European Union will pay close attention to how WADA adapts its regulatory framework to respond to the principles that will be set out by the Court of Justice. Over the years, the European Union has, in fact, already intervened on several occasions with recommendations to WADA aimed at encouraging full compliance with EU data protection rules.[1] This will be all the more so if the Court of Justice were to follow AG Spielmann's Opinion, since in that case the EU could be expected to intervene against EU NADOs through sanctions for non-compliance with the GDPR, and/or against international bodies processing EU data subjects' information without an adequate legal basis.

In this context, there are two aspects to consider: the legal dimension and the question of political legitimacy. From a legal perspective, Article 3, paragraph 2 of the GDPR clearly establishes that the regulation applies regardless of whether the processing takes place within the Union. It follows, therefore, that insofar as personal data of EU athletes are processed through ADAMS, Article 3, paragraph 2 of the GDPR may bring such processing within the scope of the GDPR.

From a political perspective, it is evident that the success of the WADA Code presupposes a proper balance between the need for global harmonisation of

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[51] ADAMS is WADA's online central information system for managing anti-doping data worldwide.

[52] In its Recommendation 1/2025 on the 2027 WADA Code, the EDPB recalled that "the EDPB and its predecessor, the Article 29 Working Party (hereinafter the 'Art. 29 WP'), have attentively followed WADA activities over time, when reviewing earlier version of the Code and its Standards. The Art. 29 WP adopted two Opinions in 20082 and 20093 on certain provisions of the Code and its International Standards. Subsequently, in 2013, the Art. 29 WP sent a letter to WADA4 containing a number of observations and concerns regarding the update of these documents. Lastly, in 2019, the EDPB provided its remarks regarding the (at the time ongoing) revision process of the Code and its Standards in a letter addressed to the Presidency of the Council of the EU".

anti-doping rules and the protection of fundamental rights, particularly in the current historical context in which athletes' fundamental rights are the subject of intense doctrinal debate and have been addressed in recent rulings of both the European Court of Human Rights[53] and the Court of Justice.[54] In this regard, it is worth recalling the central role played by ADAMS, which constitutes the backbone of WADA's information architecture and facilitates cross-border data flows involving athletes, laboratories, and anti-doping organisations worldwide. This global dimension further underscores the importance of ensuring consistent data protection safeguards.

As a result, in the face of a potential risk of fragmentation of the anti-doping framework, WADA may have an interest in amending its rules and privacy standards on a global scale. In light of a possible "Brussels effect"[55] of EU data protection law, WADA may opt for a proactive stance, positioning itself as a vehicle for the global dissemination of EU data protection norms. At a more operational level, this evolution would also require NADOs to strengthen their compliance mechanisms under the GDPR. In practice, this could entail carrying out Data Protection Impact Assessments (DPIAs), which are often neglected

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[53] ECtHR, Grand Chamber, *Semenya v. Switzerland,* 10 July 2025, available at *https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22appno%22:[%2210934/21%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-244348%22]}*. S. Bastianon, *The ECtHR's Ruling in the Semenya v.Switzerland Case: What is Next For International Sports Abritration and Ahtletes's Human Rights?,* RDES, 2023, 151; S. Bastianon, *The Timeline of the Semenya Saga. Waiting for the Grand Chamber*, available at *https://rivista.eurojus.it/the-timeline-of-the-semenya-saga-waiting-for-thegrand-chamber/*; A. Duval, *The Finish Line of Caster Semenya's Judicial Marathon: A Wake-up Call for the Swiss Federal Supreme Court and the Court of Arbitration for Sport*, VerfBlog, 11 July 2025, available at *https://verfassungsblog.de/caster-semenya-ecthr/*, DOI: 10.59704/10b996f0cb75f482; A. Duval, *Righting the Lex Sportiva: The Semenya v Switzerland Case and the Human Rights Accountability of Transnational Private Governance, The European Convention Human Rights Law Review*, Brill, 25 April 2025; S. Bastianon, M. Colucci, *The Semenya V. Switzerland Ecthr Grand Chamber Judg*ement: *Jurisdiction, Procedural Rights, And Sports Arbitration,* RDES, available at *https://www.rdes.it/RDES_2025_BASTIANON-COLUCCI_SEMENYA_copyright.pdf*; J. Cooper, *Intervention: Semenya v Switzerland (European Court of Human Rights, Grand Chamber), No. 10934/21, July 10, 2025*, 2025, Entertainment and Sports Law Journal 23(1), available at doi: *https://doi.org/10.16997/eslj.1985*.

[54] Court of Justice, judgment 1° August 2025, *Royal Football Club Seraing SA v. Fédération Internationale de Football Association (FIFA), Union des Associations Européennes de Football (UEFA), Union Royale Belge des Sociétés de FootballAassociation ASBL (URBSFA*), case C-600/23, ECLI:EU:C:2025:617. S. Bastianon *From Lausanne to Luxembourg: the CJEU's Seraing Judgment and the Boundaries of Sports Arbitration Under EU Law*, Football Legal, 5 August 2025, available at *https://www.football-legal.com/content/from-lausanne-to-luxembourg-the-cjeus-seraingjudgment-and-the-boundaries-of-sports-arbitration-under-eu-law*; D. Mavromati, *The Seraing v. FIFA Judgment of the CJEU: Essential Takeaways*, available at *https://www.sportlegis.com/2025/ 08/12/ the-seraing-v-fifa-judgment-of-the-cjeu-essential-takeaways/*; S. Bastianon, M. Colucci, *Sports arbitration and effective judicial protection under EU law: the RFC Seraing case,* RDES, available at *https://www.rdes.it/RDES_2025_BASTIANON-COLUCCI_SERAING_copyright.pdf*.

[55] A. Bradford, *The Brussels Effect: How the European Union Rules the World*, available at *https://doi.org/10.1093/oso/9780190088583.001.0001*.

despite mandatory in cases involving large-scale processing of sensitive data – such as athletes' biological and health data occurs.

Looking ahead, closer cooperation between WADA, Member States, and data protection authorities will likely be essential to ensure that anti-doping rules align with privacy principles, regardless of the forthcoming judgment of the Court of Justice.

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